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Attorneys for Defendant, Walmart

DIANE PLOTKIN and RICHARD PLOTKIN,

Plaintiffs,

v.

WALMART and/or ABC CORPORATION
#1-5 (fictitious name) i/j/s/a,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
CAMDEN COUNTY

DOCKET NO.: CAM-L-002080-21
Civil Action

**DEFENDANT, WALMART’S,
ANSWER TO PLAINTIFFS’
COMPLAINT WITH AFFIRMATIVE
DEFENSES, DESIGNATION OF TRIAL
COUNSEL, DEMAND FOR
DISCOVERY, CERTIFICATIONS, AND
JURY DEMAND**

Defendant, Walmart (hereinafter referred to as “Defendant” or “Walmart”), by way of Answer with Affirmative Defenses to Plaintiffs’ Complaint, hereby avers as follows:

PARTIES

1. Admitted in part and denied in part. It is admitted only that Walmart maintained and operated a retail store located at 265 NJ-73 in West Berlin, New Jersey. The remaining averments in this paragraph are denied.

2. Denied. Defendant need not respond to these averments as they are directed toward other parties.

FIRST COUNT

3. No allegations.

4. Defendant hereby incorporates by reference the preceding paragraphs as though set forth at length herein.

5. Denied.

6. Denied.

7. Denied.

8. Denied.

9. Denied.

10. Denied.

11. Denied.

12. Denied.

WHEREFORE, Defendant hereby demands judgement in their favor and against all other parties, together with costs and attorneys' fees and such other relief as this Honorable Court deems equitable, just and proper.

SECOND COUNT

13. Defendant hereby incorporates by reference the preceding paragraphs as though set forth at length herein.

14. Denied.

15. Denied.

WHEREFORE, Defendant hereby demands judgement in their favor and against all other parties, together with costs and attorneys' fees and such other relief as this Honorable Court deems equitable, just and proper.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred because Plaintiffs were injured as a result of a known risk, which was assumed.

SECOND AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred insofar as Plaintiffs failed to mitigate damages.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs failed to take due care for Plaintiffs' own safety.

FOURTH AFFIRMATIVE DEFENSE

Plaintiffs' actions caused the incident at issue.

FIFTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by reason of Plaintiffs' own contributory negligence or, alternatively, Plaintiffs' damages, if any, are reduced by the percentage of Plaintiffs' comparative negligence and the Comparative Negligence Act, *N.J.S.A. 2A:15-5.1, et seq.* and common law.

SIXTH AFFIRMATIVE DEFENSE

Defendant breached no duty to the Plaintiffs.

SEVENTH AFFIRMATIVE DEFENSE

Defendant is entitled to a credit or set-off with respect to any collateral payments made to Plaintiffs for injuries arising from the wrong alleged pursuant to *N.J.S.A. 2A:15-97*, and *Perreira v. Rediger*, 169 N.J. 399 (2001) including, but not limited to, any medical bills or costs paid or reduced by health insurance coverage.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiffs' causes of action may be barred by the applicable Statute of Limitations.

NINTH AFFIRMATIVE DEFENSE

Defendant's conduct was privileged, either absolutely or conditionally.

TENTH AFFIRMATIVE DEFENSE

Plaintiffs' causes of action are barred by *res judicata* and/or collateral estoppel.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiffs' causes of action are barred by the Entire Controversy Doctrine.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiffs' damages are limited by the Doctrine of Avoidable Consequences.

THIRTEENTH AFFIRMATIVE DEFENSE

The alleged incident complained of resulted from circumstances beyond the control of Defendant.

FOURTEENTH AFFIRMATIVE DEFENSE

While denying the allegations in the Complaint regarding damages allegedly sustained by Plaintiffs, Defendant states that if Plaintiffs prove such damages, they were caused by the superseding and intervening acts, negligence and/or fault of other parties or entities over whom Defendant had no control, nor right of control, and for whose actions Defendant are not and cannot be liable.

FIFTEENTH AFFIRMATIVE DEFENSE

Defendant demands apportionment for any and all monies paid due to acts, conduct, negligence, committed by any co-defendant, third-party defendant, settled defendant, dismissed parties, or parties that were not joined by Plaintiffs within the applicable statute of limitations.

SIXTEENTH AFFIRMATIVE DEFENSE

Defendant incorporates by reference all affirmative defenses asserted by any co-defendant or third-party defendant in this action, whether such defense was asserted prior or subsequent to this pleading.

SEVENTEENTH AFFIRMATIVE DEFENSE

Defendant reserves the right to assert all defenses disclosed or developed in the course of discovery, arbitration and/or trial.

EIGHTEENTH AFFIRMATIVE DEFENSE

If Plaintiffs failed to follow the advice and direction of the health care providers regarding recommended treatment, then Plaintiffs' recovery is barred or reduced by failure to mitigate damages.

NINETEENTH AFFIRMATIVE DEFENSE

Defendant had no actual or constructive notice of any condition alleged by Plaintiffs.

TWENTIETH AFFIRMATIVE DEFENSE

Plaintiffs failed to avoid an open and obvious condition and/or assumed the risk of injury.

TWENTY-FIRST AFFIRMATIVE DEFENSE

Plaintiffs failed to state a claim for negligent infliction of emotional distress upon which relief can be granted.

ANSWER TO ANY AND ALL CROSSCLAIMS

Walmart denies each and every crossclaim filed against them or to be filed against them in this action.

DEMAND PURSUANT TO Rules 1:5-1(a) and 4:17-4(c)

PLEASE TAKE NOTICE that the undersigned attorney for Walmart hereby demands that each party herein serving pleadings and/or discovery and/or receiving papers responsive thereto serve copies of all such pleadings, discovery and documents received from any party upon the undersigned and **PLEASE TAKE FURTHER NOTICE** that this is a continuing demand.

DEMAND FOR DISCOVERY

Please take notice that Walmart requests from Plaintiffs certified answers to New Jersey Uniform Form “A” Interrogatories as found in Appendix II to the New Jersey Rules of Court, 2015, and the enclosed Supplemental Interrogatories and Notice to Produce.

DEMAND FOR JURY TRIAL

Trial by jury is hereby demanded pursuant to R. 1:8-2 and R. 4:35-1.

DESIGNATION OF TRIAL COUNSEL

Please take notice that Patrick J. McDonnell, Esquire, is hereby designated Trial Counsel.

MCDONNELL & ASSOCIATES, P.C.

/s/ Lisa M. Only

Dated: August 20, 2021

By:

Patrick J. McDonnell, Esquire
Attorney I.D. No.: 026781991
Email: pmcdonnell@mcda-law.com
Lisa M. Only, Esquire
Attorney I.D. No.: 011142009
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Attorneys for Defendant, Walmart

CERTIFICATION PURSUANT TO RULE 4:5-1

Pursuant to R. 4:5-1, there are no other actions currently pending or contemplated. The undersigned hereby certifies that the subject matter of this litigation is not the subject of any other action pending in any other Court and is not the subject of any pending arbitration proceeding, nor is there any such action or arbitration proceeding contemplated. There are no other parties who should be joined in this action at this time.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

MCDONNELL & ASSOCIATES, P.C.

/s/ Lisa M. Only

Dated: August 20, 2021

By:

Lisa M. Only, Esquire
Attorneys for Defendant, Walmart

CERTIFICATE OF SERVICE

I, Lisa M. Only, Esquire, hereby certify that on August 20, 2021, Defendant, Walmart's, Answer to Plaintiff's Complaint with Affirmative Defenses, Designation of Trial Counsel, Demand for Discovery, Certifications, and Jury Demand was filed and served via the New Jersey eCourts system. A true and correct copy of the filed document was also served via first class mail, postage pre-paid, upon the following counsel of record:

Saul J. Steinberg, Esquire
ZUCKER STEINBERG & WIXTED
415 Federal Street
Camden, New Jersey 08103
Attorneys for Plaintiffs, Diane Plotkin and Richard Plotkin

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

/s/ Lisa M. Only

Lisa M. Only, Esquire

Civil Case Information Statement

Case Details: CAMDEN | Civil Part Docket# L-002080-21

Case Caption: PLOTKIN DIANE VS WALMART
Case Initiation Date: 07/09/2021
Attorney Name: LISA MARIE ONLY
Firm Name: MC DONNELL & ASSOCIATES PC
Address: METROPOLITAN BUSINESS CENTER 860
FIRST AVENUE UNIT 5B
KING OF PRUSSIA PA 19406
Phone: 6103372087
Name of Party: DEFENDANT : WALMART
Name of Defendant's Primary Insurance Company
(if known): None

Case Type: PERSONAL INJURY
Document Type: Answer
Jury Demand: YES - 6 JURORS
Is this a professional malpractice case? NO
Related cases pending: NO
If yes, list docket numbers:
Do you anticipate adding any parties (arising out of same transaction or occurrence)? NO
Are sexual abuse claims alleged by: RICHARD PLOTKIN? NO
Are sexual abuse claims alleged by: DIANE PLOTKIN? NO

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

Do parties have a current, past, or recurrent relationship? NO

If yes, is that relationship:

Does the statute governing this case provide for payment of fees by the losing party? NO

Use this space to alert the court to any special case characteristics that may warrant individual management or accelerated disposition:

Do you or your client need any disability accommodations? NO

If yes, please identify the requested accommodation:

Will an interpreter be needed? NO

If yes, for what language:

Please check off each applicable category: Putative Class Action? NO **Title 59?** NO **Consumer Fraud?** NO

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule 1:38-7(b)*

08/20/2021
Dated

/s/ LISA MARIE ONLY
Signed

